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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 ETHAN MURPHY, et al.,

4 Plaintiffs,

5 v.

13 Civ. 6503 (RJS)

6 PHILIPPE LAJAUNIE, et al.,

7 Defendants.

8 -----x

9 June 21, 2016

3:45 p.m.

10 Before:

11 HON. RICHARD J. SULLIVAN,

12 District Judge

13 APPEARANCES

14 JOSEPH, HERZFELD, HESTER & KIRSCHENBAUM

Attorneys for Plaintiffs

15 BY: DANIEL M. KIRSCHENBAUM

-and-

16 JEFFREY E. GOLDMAN

17 KAUFMAN, DOLOWITCH & VOLUCK, LLP

Attorneys for Defendants

18 BY: JEFFERY A. MEYER

AARON N. SOLOMON

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1 (Case called)

2 THE COURT: Let's take appearances. For the  
3 plaintiff?

4 MR. KIRSCHENBAUM: Daniel M. Kirschenbaum. Good  
5 afternoon, your Honor.

6 THE COURT: Okay, Mr. Kirschenbaum, good afternoon.

7 MR. GOLDMAN: Jeffrey Goldman for the plaintiff.

8 THE COURT: Mr. Goldman, good afternoon to you.

9 And for the defendants?

10 MR. MEYER: Jeffrey Meyer and Aaron Solomon.

11 THE COURT: We have Mr. LaJaunie.

12 MR. FERRARI: I'm Robert Ferrari. I am here -- I am  
13 an attorney. I am here as a consultant to Mr. LaJaunie on the  
14 motion to be relieved as counsel.

15 THE COURT: What does that mean to be a consultant?

16 MR. FERRARI: Pardon me?

17 THE COURT: What does it mean to be a consultant?

18 MR. FERRARI: If he has any problems he is going to  
19 speak on his own about why he thinks the bills are not proper.  
20 If he has any problem, he will turn to me and ask me a  
21 question.

22 THE COURT: Well, I will let you sit there but  
23 obviously you are not counsel of record. Is there a plan to  
24 make you counsel of record at some point?

25 MR. FERRARI: I'm sorry, sir?

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1 THE COURT: Is there plan to make you counsel of  
2 record at some point?

3 MR. FERRARI: Maybe. Maybe not. I don't know yet. I  
4 don't know that I want to be counsel of record.

5 THE COURT: Everybody, have a seat.

6 MR. FERRARI: He has attorneys now that have so-called  
7 spent \$200,000 of his insurance money. He thinks that they  
8 were overset spent that they weren't entitled to the \$200,000.

9 THE COURT: That's not really the issue today. So,  
10 have a seat.

11 So, we are here because of defense counsel's request  
12 or motion to be relieved, based on non-payment, and then I have  
13 a letter from plaintiff opposing that request arguing that to  
14 relieve counsel at this point would effectively scuttle the  
15 trial date that's been set and the pretrial submission dates  
16 that have been set for some time. Another thing that is  
17 supposed to happen in the short-term is that defendants are  
18 supposed to produce a list of class members with addresses or  
19 contact numbers. And then there is supposed to be notice that  
20 goes out to those folks quickly since I think we are already  
21 behind schedule on that.

22 So, we have got a full plate of things that are  
23 supposed to be happening and so I guess the question is is  
24 relieving counsel going to -- is it going to affect that  
25 schedule.

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1           So, let me ask -- I am not sure you can answer that  
2 question.

3           MR. KIRSCHENBAUM: Your Honor, I just want to, before  
4 defendants -- just to clarify our position. We are much more  
5 concerned with the schedule remaining on pace including the  
6 class notice going out and outstanding documents being turned  
7 over now than how defendants decide they want to represent  
8 themselves in the long run.

9           THE COURT: Well, that's fine, but I mean there is a  
10 number of things that are supposed to be happening, only one of  
11 which is the class list and -- well, are you referring to  
12 discovery materials?

13           MR. KIRSCHENBAUM: Your Honor ordered the defendants  
14 to turn over a whole series of documents by June 16th. It is  
15 not clear to us why defendants still haven't turned those over,  
16 but in the order that's filed on the docket is no. 219, which I  
17 believe was issued shortly after our last conference before  
18 your Honor there is a whole bunch of stuff they were supposed  
19 to turn over so that we could stay on track to have our  
20 September trial and none of that has been turned over.

21           THE COURT: So, let me hear from the defendant on  
22 that. What is the story with the materials that are out of  
23 time?

24           MR. SOLOMON: Judge, we are fully prepared to address  
25 the discovery issues as well as our motion but we are going to

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1 respectfully request that we be permitted to explain the  
2 situation, in camera, as it relates to attorney-client  
3 privilege.

4 THE COURT: There is nothing privileged about whether  
5 or when these materials that I have ordered to be produced are  
6 going to be produced.

7 MR. SOLOMON: Part of it has to deal with -- it is  
8 another basis for our application to withdraw.

9 THE COURT: I am going to deny that. I am going to  
10 deny that application subject to renewal later, but where are  
11 the materials?

12 MR. MEYER: Your Honor, as we discussed at the last  
13 conference, we advised the that the restaurant now, there is  
14 only one functioning restaurant, one operating restaurant; the  
15 Park Avenue location closed. Les Halles is working on a  
16 skeleton crew in the admin office. We have attempted to work  
17 with the client, Mr. LaJaunie and they have done everything  
18 they can to get us that information. However, the depth and  
19 breadth of it and the limited resources available to the  
20 defendant, the corporate defendant, have made that impossible.

21 We have not yet received those documents. It is one  
22 individual that is employed there who, in addition to trying to  
23 wind down the one restaurant merge it with the second with one,  
24 keep the second document a flight has not been.

25 THE COURT: So the Court Order, hey, that's just

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1 least. The Court should understand that there is other things  
2 going on and if we are fifth or sixth on the priority list we  
3 should be pleased.

4 So, what? Am I just to sanction defendants every day  
5 that they don't produce these things? Do you think that will  
6 make them rise up the list? Put your hand down. Put your hand  
7 down.

8 MR. MEYER: Your Honor, we have tried everything we  
9 can to get these documents. We have spoken -- we have kept up  
10 relationship with the defendants, rapport with them about the  
11 documents. We have just not received them yet.

12 THE COURT: So that sounds like contempt to me so -- I  
13 mean, I am not going to let you out of this case just because  
14 you are not getting paid because I'm getting totally dissed  
15 here.

16 So, if I am going to endure this pain then you can  
17 sure as hell believe you are going to endure it too and I am  
18 not going to have the plaintiffs bear the cost of this. So,  
19 that's not happening. So, I guess the issue then is what is it  
20 going to take to make defendants comply with Court orders. So,  
21 what is it going to take? \$10,000 a day? Do you think a fine  
22 of \$10,000 a day? Do you think that would result in compliance

23 MR. MEYER: Your Honor, I would hope we would be able  
24 to comply without contempt and without penalty.

25 THE COURT: Well, let's just sort of go through this

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1 again. I issued an Order on April 15th that set dates for  
2 these things to be produced and they haven't been produced.

3 MR. KIRSCHENBAUM: And, your Honor, defendants did ask  
4 for a stay since then and got rejected.

5 THE COURT: Yes.

6 So, in any event, it seems to me that the only thing  
7 to do now is to see if there are other ways to compel  
8 compliance. I guess the last resort would be to grant judgment  
9 against the defendants for ignoring Court orders. That's a  
10 last resort and I don't think we need to go there today, at  
11 least I hope not. I plan to try some other things first but I  
12 really do not intend to just let people ignore my orders  
13 because they're more interested in other things.

14 So, Mr. LaJaunie seems to want to say something.

15 MR. FERRARI: Your Honor --

16 THE COURT: Mr. LaJaunie seems to want to say  
17 something.

18 THE DEFENDANT: Yes. Yes, your Honor. Thank you.

19 There is one and I apologize for the lack of proper  
20 cooperation, but the situation we are in now is the consequence  
21 of what has happened when Mr. Goldman took a court document and  
22 sent it to my staff of the larger of the two restaurant, Les  
23 Halles, the original one for 45 years, and he circulated a  
24 motion of -- is it a motion or some eviction document that was  
25 a -- it tore at my negotiation with the landlord when they were

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1 renegotiating the lease after 25 years and a new landlord who  
2 obviously, the effect of circulating this eviction document  
3 which was not an eviction process, it was part of our  
4 negotiation with the landlord was that my staff walked out.  
5 And when this happened then the restaurant seized operation  
6 just as I was trying to finalize the lease for negotiation. We  
7 were already four months after the end of the lease and we had  
8 to vacate the restaurant in 10 days with no staff. 10 days and  
9 no staff.

10 The consequence of that is that physically -- forget  
11 the staff walking away with wine and liquor and equipment and  
12 so forth, the consequence of Mr. Goldman's action is that we  
13 had to vacate the restaurant that had been open for 25 years  
14 that was full of all the documents we had for this process and  
15 it was dumped with chairs and kitchen equipment and everything  
16 and dozens if not hundreds of boxes of documents.

17 I have lost all my staff. I have only new staff but  
18 one person who belonged to the old office. We are trying to  
19 stay open with the smaller restaurant that we have left and it  
20 is going to take, as I said immediately, it is going to take  
21 months to even find the boxes because everything is literally a  
22 pile of wet, stinky garbage. That's what we are dealing with.

23 So, there is no bad intention. There is no -- there  
24 is nothing other than we are trying to even find the documents  
25 and I don't know how these things work. I am trying my best to



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1 move things and I have this one person who is the only one left  
2 to know how to administrate one restaurant and find these  
3 documents.

4 At this point, it is just time. We need time. I have  
5 three woks and one hot plate. I don't know how to act faster.  
6 We could not -- the website for the restaurant stayed as is  
7 for -- until last week. I didn't have \$2,000 to have someone  
8 take the old restaurant down. Now at least it doesn't talk  
9 about the second restaurant.

10 So, beyond personnel there is a lack of cash, there is  
11 a lack of everything to accomplish promptly and following the  
12 schedule, the Court Order.

13 As a side note, I would like to say I had requested  
14 from the beginning three years ago that I would be advised of  
15 every hearing, every court, even if it were just a quick  
16 scheduling hearing. I was not informed of the hearing last  
17 time when all of this was decided although I was in town and I  
18 would have voiced all my concern at the time and hopefully be  
19 heard about what was possible and have a different calendar.

20 The calendar is just not -- we cannot accomplish this  
21 Court Order as it was ordered.

22 THE COURT: I guess I'm not persuaded. So, I ordered  
23 on April 15th a list -- a class list in Excel format was to be  
24 produced by June 1st and I am told that that's not been done,  
25 that there are a bunch of documents that are wet, stinky

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1 garbage that nobody has gone through and nobody is capable of  
2 going through.

3 That's basically what you are telling me.

4 THE DEFENDANT: No.

5 THE COURT: No?

6 THE DEFENDANT: If I may, your Honor, I am saying it  
7 is going to take a long time to go through everything and  
8 produce one by one all the names and whatever documents needs  
9 to be produced.

10 THE COURT: Okay.

11 THE DEFENDANT: What I was saying is compared to  
12 having --

13 THE COURT: And I am hearing about that on June 21st  
14 even though it was due on June 1st and I ordered it on April  
15 15th.

16 THE DEFENDANT: And I should have been here on April  
17 15th and I was not made aware of the hearing and when I was  
18 made aware of the hearing the Court order, that was the Court  
19 order.

20 THE COURT: No, no. This hearing was scheduled after  
21 I got a letter from your lawyer saying they wanted to withdraw.  
22 That's when we scheduled this hearing.

23 THE DEFENDANT: I understand.

24 THE COURT: Production of documents was ordered back  
25 in April, so.

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1           THE DEFENDANT: And I voiced to my lawyers immediately  
2 that it was going to take months and months and months to  
3 produce exactly all of these documents. The time before we  
4 were very diligent, very active, perfectly on time to produce  
5 every document. At the time I had two restaurants, I had four  
6 people in the office plus two interns who I had hired just for  
7 that matter, meaning the request of the production -- document  
8 production.

9           THE COURT: Okay. So, how long are you telling me  
10 this is going to take?

11          THE DEFENDANT: It is going to take months, your  
12 Honor.

13          THE COURT: Months.

14          THE DEFENDANT: I'm sorry?

15          THE COURT: Months is what you are telling me?

16          THE DEFENDANT: Months, several months, many months.  
17 And I expect that once we get everything organized that things  
18 are going to, you know, at least are going to get things going  
19 but right now it is just even finding and organizing the  
20 documents that we need to provide the information requested.

21          THE COURT: I want to be clear about the documents we  
22 are talking about. What was ordered to be produced by June 1st  
23 was an Excel spreadsheet that includes the names of all the  
24 class members, the last known addresses and locations for those  
25 people, the dates of employment for each individual at each

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1 restaurant and the names of the positions that they held.

2 That's what we are talking about, right?

3 There was then contemplation of post-certification  
4 discovery but that was going to be after the list was produced  
5 and notice went out on class certification. And so, there was  
6 also an order that eight opt-in plaintiffs who had not yet  
7 provided interrogatories and documents would do so by June 1st  
8 and that's happened?

9 MR. GOLDMAN: Yes.

10 MR. SOLOMON: There are some opt-in plaintiffs who  
11 didn't respond. We are going to deal with that in course.

12 THE COURT: So, I will hear from plaintiffs as to what  
13 they propose we do in light of what Mr. LaJaunie has just said.

14 MR. KIRSCHENBAUM: Your Honor, defendants have  
15 representation by counsel right now. They had representation  
16 on April 19th. They were here present in the same room as me  
17 when this discussion happened about what documents would need  
18 to be produced. They chose not to alert your Honor to anything  
19 until the day before the class list was due.

20 THE COURT: Right.

21 MR. KIRSCHENBAUM: And on that date they asked for a  
22 stay and had it rejected.

23 THE COURT: Right.

24 MR. KIRSCHENBAUM: So, even if Mr. LaJaunie himself is  
25 having a manpower issue, there are people in this world that

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1 could get this information in accordance with your Honor's  
2 April 15th order.

3 THE COURT: Probably. I would say there probably are  
4 people in this world who could do it.

5 What are you proposing?

6 MR. KIRSCHENBAUM: I propose that defendants be given  
7 until after the weekend to get us all the documents that your  
8 Honor ordered and the class list that your Honor ordered so  
9 that we could keep the trial date as planned and if they don't,  
10 they would be subject to appropriate sanctions.

11 THE COURT: And if then it sounds like they certainly  
12 won't be able to do that, at least based on what's been  
13 represented, then sanctions of what? It is not supposed to be  
14 punitive, it is supposed to be something that is going to  
15 compel compliance so what would that be?

16 MR. KIRSCHENBAUM: One question we have to ask  
17 ourselves is are defendants essentially setting up the Park  
18 Avenue corporation for default because if they are, why should  
19 we have to go through the pain of chasing our tails the next  
20 three months? If they can't get the documents, the lawyers  
21 don't want to represent them, they don't want to spend the  
22 manpower to do what your Honor wants, then that entity could be  
23 held in contempt and punished with a default and the remaining  
24 entities could move on to a trial on their end of the  
25 liability. Mr. LaJaunie has some FLSA liability and the John

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1 Street location is still in operation.

2 THE COURT: So, in other words you are saying if they  
3 don't comply in short order with the April 15th order that then  
4 I would enter a default. That's what you are saying?

5 MR. KIRSCHENBAUM: Yes, your Honor.

6 THE COURT: Okay.

7 MR. KIRSCHENBAUM: I would like to point out that a  
8 lot of the documents also relate to the John Street location.  
9 It is conceivable that defendants stored documents for John  
10 Street also in Park Avenue and those documents are also wet and  
11 stinky but a lot of these documents are payroll records that  
12 ADP presumably has or that exist electronically as well; for  
13 example, tip sheets, year end payroll reports, etc.

14 I mean, if the only way defendants could produce them  
15 is in a wet format we will figure out what to do with them but  
16 payroll records are something that, A, even at the Park Avenue  
17 location should be easily locateable; B, may exist  
18 electronically; and C, with the John Street records which we  
19 don't have.

20 THE COURT: All right. Let me ask counsel, without  
21 revealing client confidences, what steps have you taken to  
22 comply with the April 15th order concerning the class list and  
23 the information required?

24 MR. MEYER: Your Honor, we have asked repeatedly via  
25 e-mail, via phone call, multiple correspondence in many, many

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1 fashions with Yoko and Mr. LaJaunie that we must get this  
2 information produced. If the Court will recall, the last April  
3 conference we were here, while the entire window was set at  
4 that point there was no way -- we were told at that point, I  
5 believe we asked for 120 days from effectively May 1 which was  
6 shorted to the June 1 deadline. We have done everything we can  
7 to try to get this information from our client. We do not know  
8 where it exists. We don't know what format it exists in. We  
9 don't have access to it. If we did, we would produce it. We  
10 don't have.

11 THE COURT: You don't have access to it. You don't  
12 have access to going to the location where these documents are  
13 stored?

14 MR. MEYER: We don't know what form these documents  
15 are in.

16 THE COURT: Mr. LaJaunie said they're in boxes and  
17 they're wet.

18 MR. MEYER: That's the first we are hearing of it.

19 THE COURT: Okay.

20 Mr. LaJaunie?

21 THE DEFENDANT: Yes, your Honor. Thank you, your  
22 Honor.

23 The main office at the time when two restaurants was  
24 at Park Avenue so all the records were there and everything was  
25 moved with truckloads of restaurant equipment so everything is

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1 at 50 John Street and hence the condition of the documents.

2 I am not saying they are destroyed, I am not saying we  
3 cannot find them, I am saying that everything is mixed and  
4 sometime has pulled open entire cases of documents and at this  
5 point I do not have the resources -- monetary or staff -- to go  
6 through these documents in an educated way knowing what to look  
7 for and do it fast. That's what it is.

8 So, no, at this point I cannot hire two people who are  
9 going to know exactly where to find it and where to find it and  
10 to put all of this together.

11 MR. KIRSCHENBAUM: Could I point out one thing, your  
12 Honor?

13 THE COURT: Well, let him finish.

14 Go ahead. Are you finished?

15 THE DEFENDANT: Yes. Yes, your Honor.

16 THE COURT: Okay. Have a set.

17 MR. KIRSCHENBAUM: Were these documents moved before  
18 April 15th or April 15th? On April 15th your Honor made an  
19 order to turn over the documents. Did someone get them wet  
20 after your Honor ordered them to be produced? Or, if they were  
21 already wet when your Honor ordered them to be produced,  
22 somebody between April 15th and today should have told us about  
23 this. It just makes no sense.

24 THE COURT: Well, it is curious, I will say that. And  
25 so, Mr. LaJaunie, what was the state of these documents in



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1 April as of April 15th when I issued the order?

2 THE DEFENDANT: Right. The restaurant closed on March  
3 30th, so everything has happened -- all of this precipitation  
4 or panic mode happened at the end of March, and since the  
5 hearing of that I was not made aware of, I have told Mr. Meyer  
6 that this is the situation and this is going to take months and  
7 months and months to go through all of this.

8 THE COURT: Okay. All right. Look. It is not going  
9 to take months and months and months. I am not going to let it  
10 take months and months and months. If what you are telling me  
11 is I have the choice of giving you months and months and months  
12 to do this on your schedule or to basically issue a default  
13 judgment against you, that's an easy question for me, I will  
14 just issue a default judgment against you, against the  
15 corporate client or clients. I may also allow, although I  
16 previously denied this request, I may also allow the plaintiffs  
17 to amend the complaint to name Mr. LaJaunie on the state claims  
18 as well. I mean I dismissed those claims because of what I  
19 think were omissions or failures to include certain facts in  
20 the 56.1 statements but if I think that this is really just an  
21 effort to render a corporate defendants judgment-proof and to  
22 leave plaintiffs sort of just with nothing but an empty  
23 judgment, then it seems to me it may be in everybody's interest  
24 and certainly in the interest of justice to allow individual  
25 defendants to be included in additional counts for additional

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1 time.

2 So, it just seems to me that defendants clearly don't  
3 consider this to be a high priority, there are other things  
4 they consider to be much higher priorities and that they can't  
5 or won't comply with the Court order.

6 I am just not that moved since the Court order was  
7 issued two and a half months ago and this is the first I am  
8 hearing of these kinds of problems. So, I think I am going to  
9 do a variation on what Mr. Kirschenbaum has requested which is  
10 I will give you another week to get this wrapped up but after  
11 that then I am going to sanction defendants for not complying  
12 with a two and a half month old order, and one of the possible  
13 sanctions will be dismissal for failure to comply with court  
14 orders.

15 I think that the goal here is to having not  
16 successfully gotten me to stay this action or to extend the  
17 period in which these things were going to happen, it seems as  
18 though the decision was made, well, we are just not going to  
19 comply and then Court will have no choice but to grant us the  
20 stay that was originally denied and that ain't happening. That  
21 was a bad strategy if that was the strategy.

22 MR. MEYER: Your Honor, if I can address the stay?

23 The stay was included in our letter to afford  
24 Mr. LaJaunie time to find new counsel and to handle these  
25 matters as we have not been --

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1 THE COURT: Right, which weeks --

2 MR. MEYER: It wasn't a strategy with Mr. LaJaunie, it  
3 was a strategy in order for us -- it wasn't a strategy. It was  
4 a request --

5 THE COURT: Well, my point is maybe the strategy was  
6 to stop complying with Court orders, to stop responding to  
7 requests from counsel, to stop paying counsel all in an effort  
8 to frankly just buy time in which to render the corporate  
9 defendants judgment-proof. I'm not making that finding but I  
10 am saying that that's certainly a possibility that leaps to  
11 mind on these facts and that's not going to be a winning  
12 strategy. I'm not going to let it be.

13 So, to the extent there is a request to be relieved as  
14 counsel, that's denied. And to the extent that there is a  
15 request for me to extend the June 1st deadline for several  
16 months, what has been described so far and months and months,  
17 that's also denied. I will give you a week to get in  
18 compliance with the Court's order and if that hasn't happened  
19 by then, then I am going to sanction the defendants for not  
20 complying. Okay? And I think it will probably be in the  
21 neighborhood of something like \$5,000 a day or \$10,000 a day.  
22 We will see if that works. And if that doesn't work, then I  
23 think I will have no choice but to enter a default judgment  
24 because, clearly, people are not complying with court orders  
25 and the goal is just to disrupt a litigation that's been going

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1 on for years -- literally years -- and for which there is a  
2 trial date that's already been set.

3 So, I will memorialize that in a minute entry.

4 Mr. LaJaunie?

5 THE DEFENDANT: Your Honor, the restaurant -- first of  
6 all, there is no strategy, no plan, or anything. At this point  
7 we are trying to stay open. We are behind the rent about a  
8 hundred thousand dollars, that's tree months of rent and  
9 various taxes and this and that. Every day is a struggle. I  
10 cannot explain unless I would have a camera to take pictures  
11 and show them in court, I cannot explain what the daily  
12 management of this remaining restaurant is. I could not  
13 sustain another day in what was in penalty, fines. And I am  
14 saying this as plainly as I can, nothing is going to be  
15 possible in one week.

16 THE COURT: Okay.

17 THE DEFENDANT: It is just not going to be possible  
18 and the result is that it is going to close the second  
19 restaurant and, again, and eliminate all possibilities of -- I  
20 mean, I thought the end of the game was to pay their fees,  
21 number one, and then what there is left for the plaintiffs. I  
22 would like to discuss the certification of the class action  
23 which has no merit and I can prove that if given the  
24 opportunity.

25 I would like to discuss the four thoughts of this

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1 action, these proceedings, and show the Court that one was  
2 entirely manufactured. The first one the maître d' issue is  
3 non-existent because systematically --

4 THE COURT: Look. If you want to fight this on the  
5 merits, that's great. That's why I have a trial date. What I  
6 have asked you to produce is not terribly onerous. It is  
7 information about the people who work there who would be  
8 members of a class who are entitled to notice going forward.  
9 It is not that onerous. I issued an order on April 15th that  
10 gave what I considered to be plenty of time to do that. You  
11 keep telling me that it just isn't possible. I just don't buy  
12 it. I mean, maybe you are unfamiliar with how litigation works  
13 but the reality is is that there are cases in this court house  
14 involving millions of pages of documents and it gets done and  
15 there are ways to get it done.

16 So, it seems to me what you are saying is that between  
17 various choices you've made the choice to not litigate this  
18 case between working on the other restaurant, between doing  
19 whatever else you think you need to do to maintain whatever  
20 holdings you have. That's your first priority and I guess  
21 that's your choice, but the consequences of that choice will  
22 be, ultimately, I think, a default judgment. And if what you  
23 are telling me today is you have no intention of complying with  
24 the order that I'm about to issue, which is that you need to  
25 comply with my prior order within a week, then maybe we should

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1 just go straight to default. Right? I mean, is there any  
2 point in just dragging this out?

3 It seems to me what Mr. LaJaunie has said to me is  
4 that he is really not planning to seriously try to comply with  
5 the order I would issue today and if that's the case, I think  
6 that representation should be enough for me to then enter a  
7 default.

8 THE DEFENDANT: Your Honor, there is absolutely no  
9 intention. I am describing consequences of what was triggered  
10 by Mr. Goldman. This restaurant was supposed to close two  
11 weeks ago and we managed to stay open with -- and I am not  
12 going to describe how we get supplies and everything -- this  
13 was going to close one week or the other. If you want me to  
14 respond to your question, very dry question about what is going  
15 to be the difference between today and one week from now, I  
16 have to admit, there is not going to be a tremendous progress.  
17 And I am phrasing this as carefully as possible but I have  
18 described a situation that -- I mean, I am working 18 hours a  
19 day, seven days a week. I have this one person who is now  
20 paid -- maybe I shouldn't say that here -- for four days and  
21 she is working six days and we are trying to keep everything  
22 together.

23 This will crumble at any point and at this point,  
24 yeah, I don't see -- I am saying that with just as plainly as  
25 possible, one week from now, there might be some progress.

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1 Again, out of hundreds of names there be -- we already have a  
2 few names, obviously.

3 THE COURT: Obviously.

4 THE DEFENDANT: I'm sorry?

5 THE COURT: Obviously. We are not talking about  
6 millions of pages of documents, we are talking about a few  
7 boxes of documents is what it sounds like to me. How many  
8 employees are we talking about?

9 THE DEFENDANT: Hundreds, your Honor.

10 THE COURT: A couple of hundred of employees. All  
11 right.

12 THE DEFENDANT: I think it is many more than that.

13 THE COURT: Many more than a couple hundred employees?

14 THE DEFENDANT: I think we are talking about five  
15 years.

16 MR. MEYER: Over a six-year window we are estimating,  
17 your Honor, that it is approximately 500.

18 THE COURT: Even that sounds high to me, but assuming  
19 that is to be the case, I think these are very discrete  
20 requests for information that, again, I ordered this in April  
21 and we are having this conversation now. So, it sounds like  
22 the decision has been made not to make this a priority, not to  
23 talk to one's lawyers and just sort of hope at the end of the  
24 day you can sort of claim hard luck and expect the Court is  
25 going to amend previously scheduled orders and I just think

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1 that was a bad calculation. So.

2 THE DEFENDANT: Your Honor, the assumption is not  
3 factual?

4 THE COURT: What assumption is not factual.

5 THE DEFENDANT: The assumption that by design we have  
6 not acted in order to collect these names. I have protested  
7 from the second Mr. Meyer informed me of your order. Where was  
8 I? Why didn't you tell me? And I would have voiced everything  
9 I am voicing now so that I would avoid to have such a tight  
10 calendar. The calendar itself --

11 THE COURT: Tight calendar? April to June 1st is a  
12 tight calendar?

13 MR. KIRSCHENBAUM: Your Honor, the class was  
14 certified --

15 THE COURT: I guarantee you that I myself alone,  
16 knowing nothing about the documents, could have achieved this  
17 result in that amount of time doing it, frankly, from 9:00  
18 until midnight every night. I guarantee you I could have done  
19 that. I am willing to stake my life on it. This is not that  
20 onerous and I gave you two months to do it, almost two months  
21 to do it and it hasn't been done and now you are telling me it  
22 is going to take many, many, more months on top of that.

23 We are going in circles here. Okay?

24 MR. MEYER: Your Honor --

25 THE COURT: So, obviously, you are displeased and I am



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1 more than willing to live with that. I am displeased, too, and  
2 I assume the plaintiffs are also displeased. It is just life.

3 What did you want to say?

4 MR. MEYER: The relationship with Mr. LaJaunie has  
5 devolved to this singular discussion about the April conference  
6 and the extension of time or the duration of time to produce  
7 these documents.

8 THE COURT: Yes.

9 MR. MEYER: That's what the relationship has devolved  
10 to. It is brought up every time we have a discussion about  
11 whether the documents are going to be produced. We should have  
12 asked for more time which I believe your Honor would state that  
13 we did, we asked for an exorbitant amount of time that was then  
14 cut down to this June 1 deadline.

15 This relationship has evaporated. As much as  
16 Mr. LaJaunie and I have worked together well and I believe we  
17 have in the past, we keep coming back to this one issue and  
18 there is no progress made as to producing these documents. I  
19 wish we could. I wish I had better news for you. I wish I had  
20 more information to tell plaintiff's counsel but we don't.  
21 This is what we are left with.

22 Hopefully in a week we have the documents and we can  
23 report some positive news but I just feel we are going to have  
24 the same conversation in a week. So, I would ask that our  
25 motion, you at least leave it open for conversation pending a

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1 result in the next week or so.

2 THE COURT: Yes, that's.

3 Fine. Look. If I ultimately end up granting a  
4 default judgment with respect to the corporate defendants and  
5 perhaps the individual defendant as well, then that will sort  
6 of take care of everything, won't it.

7 So, I guess I am inclined to give this a week because  
8 I'm confident that this could be done in a week if there was a  
9 will, and if there isn't a will, then we will deal with that  
10 when it happens.

11 Mr. Kirschenbaum, anything else you want to say on  
12 this?

13 MR. KIRSCHENBAUM: Nothing further, your Honor.

14 I guess, do we reconvene in a week or just assume it  
15 is going to get done?

16 THE COURT: No, I guess I will ask for a status letter  
17 in a week.

18 MR. KIRSCHENBAUM: Okay.

19 THE COURT: Then depending on what I get, I will issue  
20 an order -- bring everybody back in or issue an order to show  
21 cause as to why I shouldn't be sanctioning and perhaps even  
22 granting a judgment against the defendants for failure to  
23 comply with Court orders.

24 So, I think that's the speed we should be going in.  
25 Okay? All right. If, in the meantime, there is some other

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1 lawyer who wants to come in, then let me know that too, but for  
2 now I am denying the motion to be removed as counsel.

3 Okay. So, a week from today puts us at the 28th, so I  
4 would like a letter from plaintiffs -- excuse me, from  
5 defendants by the 28th indicating where they are with that  
6 production, and then if you want to respond I will give you 24  
7 hours to respond, Mr. Kirschenbaum. Okay?

8 MR. KIRSCHENBAUM: Yes, your Honor.

9 THE COURT: Let's do that.

10 Is there anything else anybody would like to say?  
11 Okay.

12 THE DEFENDANT: May I ask a question?

13 What is the difference between the judgment and the  
14 trial? How could it be a judgment before the trial?

15 THE COURT: Here is the deal. I issued a court order  
16 in April. If a party tells me we are not complying with that  
17 court order, the heck with it, we can't or won't, have no  
18 intention of doing that and then don't, then I can sanction  
19 them by saying, well, until you do, I am going to hold you on  
20 the hook for some monetary penalties, or I can ultimately find  
21 against the defendant, I can find for the plaintiffs and issue  
22 a judgment against the defendants for failing to comply with  
23 the Court's orders and then we wouldn't have a trial, then  
24 there would just be a judgment.

25 THE DEFENDANT: I understand.

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1           THE COURT: And that judgment could be collected on  
2 and that would -- that might entail additional discovery, it  
3 might entail additional proceedings, I don't know, but there  
4 would be a judgment and there would be no trial at that point.

5           So, we are not there yet but that is, I guess, the  
6 worst case scenario if my orders are not complied with, okay?

7           THE DEFENDANT: I understand, your Honor.

8           THE COURT: Thanks very much. If anybody needs a copy  
9 of the transcript, you can take that up with the court  
10 reporter, either now or later through the website. Okay?

11          Thank you.

12                           o0o